

# Exhibit D



Jason Ward Johnson, Esq.  
(407) 284-3642  
JJohnson@ByrdCampbell.com

December 14, 2022

**VIA E-MAIL**

Jeffrey Korn, Esq.  
Michael Gottlieb, Esq.  
Brady Sullivan, Esq.  
Willkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019-6099

**RE: PDV USA, Inc. v. Interamerican Consulting Inc.**  
**Case No.: 1:20-cv-03699-JGK-RWL**

Dear counsel:

We write to address your December 7, 2022 letter (the “Letter”) regarding the indictment of David Rivera (*United States v. David Rivera and Esther Nuhfer*, 22-20552, Indictment (S.D. Fla.) (the “Indictment”)) and the various demands contained therein.

First, notwithstanding its claim to the contrary, the Letter represents a marked shift in the position that PDV USA has consistently taken since the outset of this case. You now claim that the Indictment “confirms what PDV USA has maintained throughout this litigation—namely, that [David Rivera] and his co-conspirator subcontractors designed the consulting agreement between PDV USA and Interamerican (the ‘Agreement’) as a vehicle to benefit the Government of Venezuela and PDVSA ... .” (Letter at 1). This attempt at rewriting the history of this litigation is obvious from even a cursory review of the pleadings and discovery in this case. From the outset of this litigation, PDV USA has maintained that it had a *valid* contract with Interamerican and has sued Interamerican for breach of that valid contract, claiming to have suffered \$15 million in damages. Now, PDV USA asserts the contradictory position that the Agreement was actually a “pretext” to obscure an “illegal” scheme. Obviously, you cannot seek to recover proceeds that you believe were paid as part of an illegal contract—especially considering that PDV USA’s own documents show that it was PDV USA officials who requested and approved these payments. To the extent you have changed this position, please immediately dismiss your claim for breach of contract.

Second, despite the inferences contained in the Letter, it should go without saying that the Indictment is not probative, as an indictment—or any charging instrument, for that matter—does not constitute proof of

Jason Johnson, Esq  
December 13, 2022  
Page 2

anything. *United States v. Bazzi*, No. 07-CR-212 A M, 2010 WL 4451454, at \*6 (W.D.N.Y. Apr. 21, 2010), *report and recommendation adopted sub nom. United States v. Xu Hang Wang*, No. 07-CR-212A, 2010 WL 4451244 (W.D.N.Y. Nov. 3, 2010) (“it is axiomatic that an indictment is merely an allegation and proof of nothing.”) (quotation omitted). So, your contention that this Indictment makes clear that Interamerican engaged in any illegal activity or that it demonstrates Interamerican has deliberately withheld responsive documents is both inaccurate and a gross overstatement of the facts.

Finally, with respect to the myriad demands contained in the Letter regarding allegedly withheld documents, there are no discovery deficiencies, as claimed. Neither Interamerican nor its counsel have knowingly withheld any responsive documents or communications. We performed an exhaustive search of Interamerican and David Rivera’s records for documents and communications responsive to PDV USA’s requests for production. To the extent the Indictment references documents or communications which we have not produced, we do not have them to produce in response to your “shock” and related demand (nor, is counsel actually aware, other than the bald allegations of the Indictment, that the referenced documents or communications even exist). We would note that Mr. Rivera’s phone was seized by the Government in November 2017, and he never retook possession of that seized electronic device. While it is possible that many of the communications from early 2017 referenced in the Indictment were on this seized phone, Interamerican’s counsel is without knowledge to confirm this possibility.

Best,

*s/Jason Ward Johnson*

Jason Ward Johnson